



Peter J. Fontaine

Chair, Environmental

Philadelphia

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Practice Areas

- Environmental Litigation & Enforcement
- Environmental Regulatory & Due Diligence
- Government & Regulatory
- Government Relations - Cozen O'Connor Public Strategies
- Environmental, Social & Governance

Industry Sectors

- Climate Change
- Renewable Energy

Education

- George Washington University Law School, J.D., 1990
- University of New Hampshire, B.A., 1986

Bar Admissions

- District of Columbia
- Maine
- New Jersey
- New York
- Pennsylvania

Court Admissions

- Pennsylvania Supreme Court
- Superior Court of New Jersey
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court -- Eastern District of Pennsylvania
- U.S. District Court -- New Jersey

Affiliations

- American Bar Association
- New Jersey State Bar Association
- Pennsylvania Bar Association

Awards & Honors

- Camden County MLK Freedom Medal, 2023
- Selected to Chambers & Partners USA 2015-2018
 - * This award is conferred by Chambers & Partners. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.
- Climate Science Legal Defense Fund Defender of Science Award, 2017
- Selected to New Jersey Super Lawyers:

Pete is chair of the firm's Environmental Practice and co-chair of the Climate Change Team. He counsels large, medium, and small companies across the United States to help them manage and resolve their environmental liabilities and capture new business opportunities arising from the convergence of the energy and environmental demands of the world. A thought leader on issues surrounding climate change, Pete has authored a number of articles on the topic.

Pete has helped an offshore wind energy company with regulatory approvals for a new project on the Outer Continental Shelf. He also is environmental counsel to two natural gas pipeline projects designed to increase natural gas supplies to communities in the northeast to lower electricity and heating costs and reduce carbon emissions and criteria air pollution. He advises pipeline owners on a multitude of environmental regulatory issues and interfaces with state and federal agencies. He has deep experience counseling a wide range of businesses to assess, manage, and resolve environmental liabilities associated with soil, water, and air pollution. Pete leads Cozen O'Connor's Brownfields Development Practice, which assists landowners and developers to identify, manage, and resolve challenges posed by real or perceived soil and groundwater contamination. This includes helping manage due diligence, negotiate environmental provisions in purchase agreements, procure liability protection from insurers and regulatory agencies, and structure remediation projects. He has advised landowners and developers on some of the most complex brownfields projects, including helping secure closure, remediation, and redevelopment of sites in Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, and Maryland. He has deep experience advising laboratories and testing services companies on data integrity issues. He also helps companies to structure and implement internal environmental compliance programs, including compliance audits, policy development and implementation, and internal investigations. He routinely defends and prosecutes environmental claims in state and federal courts and administrative agencies, including before the Pennsylvania Environmental Hearing Board and the New Jersey Office of Administrative Law. He advises consumer product manufacturers in connection with toxic and hazardous substances subject to California's Proposition 65 and similar state and federal laws.

Pete has represented several clean technology companies including energy storage companies and electric vehicle companies, seeking to develop projects and explore new markets. In 2008, he conceived and helped form the Battery Electric Vehicle Coalition, which successfully advanced federal legislation creating a federal investment tax credit for electrical vehicle charging infrastructure to level the playing field for electric vehicles.

Prior to private practice, he was an enforcement lawyer with the Office of Enforcement, U.S. Environmental Protection Agency in Washington, D.C., where he helped write regulations implementing the 1990 Amendments to the Clean Air Act, prosecuted civil violations of environmental laws, and served as a Special Assistant to the Director of Civil Enforcement. He received the EPA's Award for Excellence for his contribution to the EPA's first multimedia enforcement team. He routinely draws on his EPA experience to help clients navigate EPA and state agency regulations to achieve practical solutions to their environmental problems.

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Environmental Law, 2005

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- Philadelphia Business Journal "40 Under 40 Award," 2003
- New Jersey Volunteer of the Century Award, Camden County, 2000
- New Jersey Environmental Federation Environmental Achievement Award, 1999
- U.S. EPA Special Act Achievement Awards, 1991-1994
- U.S. EPA Assistant Administrator's Award for Excellence, 1993

Outside the office, Pete is active in several civic engagements in the Greater Philadelphia community. He helped secure passage of three open space public referendum questions in 1998, 2005, and 2006, which created stable funding for preserving open spaces, farms, historic sites, and recreational areas in Camden County, N.J. From 1999 to 2013, he chaired Camden County's Open Space Advisory Committee, which has preserved more than 2,000 acres of farmland and open space. He recently served on New Jersey Governor Phil Murphy's environmental and energy transition committee where he developed a set of policy recommendations to address climate change. He is a board member of the Hawk Mountain Sanctuary Association, a conservancy dedicated to protecting birds of prey through raptor conservation science and education. He is a former board member of the New Jersey Conservation Foundation, the state's oldest land conservation organization.

Pete earned his Bachelor of Arts from the University of New Hampshire in 1986, where he was a member of the varsity soccer team. He received his J.D. from George Washington University Law School in 1990.

Experience

In a defamation lawsuit pending for nearly a dozen years, we secured a seven-figure jury verdict awarding punitive damages to our client, climate scientist Professor Michael Mann, Presidential Distinguished Professor in the Department of Earth and Environmental Science at the University of Pennsylvania. The verdict was reached after a four-week trial in the District of Columbia against an adjunct scholar with the Competitive Enterprise Institute (CEI) and a writer for the National Review. Professor Mann was a lead author of groundbreaking research in the late-1990s, which demonstrated a sharp increase in northern hemisphere temperatures linked to increasing greenhouse gas emissions. The research, which came to be known as the "Hockey Stick" graph, subsequently was replicated and extended by other research teams and now is considered settled science. Professor Mann filed his defamation suit in 2012 after the defendants published blog posts asserting that he had falsified his Hockey Stick research and calling him "the Jerry Sandusky of climate science" who "molested and tortured data." The verdict is noteworthy because it involved a case of climate science disinformation and demonstrated that the "actual malice" test established by *New York Times v. Sullivan* to safeguard First Amendment rights is not unattainable when there is clear and convincing evidence of conscious avoidance of objective facts suggesting falsity.

Secured a favorable American Arbitration Association award on behalf of a nationally recognized environmental remediation firm concerning responsibility for a leaking wastewater pipe beneath a TSCA-regulated cap. Following a four-week arbitration hearing, involving four expert witnesses and multiple fact witnesses, our client prevailed and was awarded attorneys' fees and costs in excess of \$1.5 million.

Favorably resolved a cost recovery claim in 2019 on behalf of our client against a California municipal utility, arising out of a 1980's massive gasoline spill which caused extensive groundwater contamination on our client's property and required approximately \$1.8 million in remediation expenditures. Under the terms of the settlement the municipal utility paid in excess of \$5 million in damages and assumed responsibility for future remediation on the property. In successfully resolving the client's 32-year environmental liability, we analyzed 25 years of soil and groundwater data, historical reports, surrounding properties, subsurface geology, and infrastructure to determine the origins of a gasoline contamination plume all of which supported a novel inverse condemnation theory of recovery culminating in the settlement.

On behalf of Perdue AgriBusiness, LLC, we helped to secure from the Pennsylvania Department of Environmental Protection the first-ever Clean Air Act Nonattainment New Source Review construction permit for a soybean vegetable oil manufacturing facility in the United States, and then defended a

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citizen's group challenge in a two-week de novo administrative trial before the Commonwealth of Pennsylvania Environmental Hearing Board. The case was the first of its kind in the United States and centered on claims that the facility's air pollution controls were insufficient under Pennsylvania's Air Pollution Control Act and the federal Clean Air Act, Lowest Achievable Emission Rate requirements. At trial, we presented the direct testimony of eight expert witnesses for Perdue on the soybean solvent extraction process, Lowest Achievable Emission Rates, thermal oxidation risks, alternative siting analyses, and the Air Toxics Rule for Solvent Extraction in Vegetable Oil Production (40 C.F.R. Part 63, Subpart GGGG) (the Vegetable Oil Maximum Achievable Control Technology standard), and cross-examined three opposing expert witnesses. After 10 days of hearing, the Environmental Hearing Board dismissed the appeal and affirmed the facility's permit on all issues. The decision sets the standard for air pollution control for vegetable oil manufacturing in the United States.

Represented renowned climate scientist Dr. Michael Mann in state court litigation holding that correspondence of public university faculty in furtherance of research may be withheld from disclosure under the Virginia Freedom of Information Act (FOIA).

Resolved state enforcement action involving chlorinated water pollution incident and resulting fish kill on behalf of Fortune 500 company.

Represents natural gas distribution company in securing environmental permits for the construction of 22-mile natural gas pipeline to repower coal electrical generation plant and improve system resiliency in wake of Hurricane Sandy.

Represented a group of energy companies in securing environmental permits for the construction of 100+-mile natural gas pipeline from the Marcellus Shale region.

Represented a potentially responsible party at the Former Macon Naval Ordnance Plant Site in connection with the EPA's proposed addition of the site to the Superfund National Priorities List. We developed and submitted technical arguments demonstrating that mercury contamination in a local stream did not originate from the site, but was more likely derived from other local sources.

Represented a Fortune 500 company in the complete revamping of a corporate environmental compliance program for facilities located throughout North America. We developed the recommended principles of an environmental compliance program, drafted corporate environmental policies, and structured an environmental auditing program and protocols.

Represented a petroleum refiner in the negotiation of a Hurricane Sandy emergency administrative order and consent agreement with EPA and state/local permitting agency allowing for temporary suspension of Clean Air Act Title V permit limits on fluid catalytic cracking units to allow for increased refinery production to respond to the Northeastern United States petroleum supply shortage.

Represented a biofuel refiner in waiver petition filed with the EPA demonstrating pursuant Clean Air Act §211(f) that a biofuel-gasoline blend was "substantially similar" to a prior EPA waiver, and therefore did not cause or contribute to a failure of any vehicle emission control device or system.

Represented a biofuel refiner in connection with the registration of a biofuel additive with the EPA pursuant to the Clean Air Act §211(b). We worked with health effects consultants in developing Tier 1 and Tier 2 information on combustion, evaporative emissions, and toxicity in support of registration.

Represented a leading technology company in the negotiation of a commercial agreement to deploy the largest privately funded network of electric vehicle charging infrastructure in the world at the time.

Resolved underground storage tank litigation with the EPA on behalf of Fortune 500 company involving alleged failure to conduct monthly release detection monitoring at three retail gasoline locations.

Represented a publicly traded waste management company in the sale of substantially all of its assets, valued at approximately \$80 million, to a private equity fund. This complex transaction drew on the experience of the firm's corporate, tax, employee benefits and executive compensation, labor and employment, commercial litigation, real estate, and utilities, energy, and environmental attorneys.

Represented an insurance company and its wholly owned subsidiaries in a nine-figure sale of stock and related real estate. This complex transaction drew on the experience of the firm's corporate, insurance corporate and regulatory, real estate, labor and employment, intellectual property, tax, antitrust, and environmental attorneys.

Represented a foreign-based multinational company in its acquisition of a California-based manufacturer of physical access solutions such as speed gates, turnstiles, and other admission devices. The transaction drew on the experience of the firm's corporate, tax, real estate, employee benefits and executive compensation, intellectual property, environmental, antitrust, and labor and employment attorneys.

On behalf of a wastewater treatment technology company, successfully negotiated a lift of an EPA import ban of a natural biological substance under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) by demonstrating that the product at issue was not intended for use as a pesticide. The matter posed an issue of first impression involving the extent to which FIFRA could be extended to regulate a water pollution control technology, and the resolution -- which included an EPA determination of non-enforcement -- enabled the client to continue its business enterprise.

On behalf of a major national company with a wide range of institutional customers and management responsibilities, prepared a comprehensive, fact-based analysis of disinfection products and methods appropriate for responses to the virus responsible for the Covid-19 pandemic. The analysis is based on reviewing the available guidance from a range of governmental and other sources. This thorough evaluation of the hundreds of products approved by EPA for use against this virus addresses the active ingredients, application processes, selection of products for specific settings (e.g., schools, food establishments) and is relied on throughout the company's operations.

Advised a leading methane emissions verification consultancy on applicability issues related to the California Air Resources Board's *Compliance Offset Protocol for Mine Methane Capture Projects* and the AB 32 Cap-and-Trade regulatory program.

Analyzed fabric supplier certifications under the Oeko-Tex Standard 100 Annex 4 and 5 for per- and poly-fluoroalkyl substances (PFAS) content and negotiated PFAS insurance on behalf of a garment manufacturer.

Represented Ocean State Job Lot, owner of 150 major retail outlets and many shopping centers throughout the Northeast and Mid-Atlantic states, in connection with the establishment of the company's first commercial condominium. The complex, multimillion-dollar transaction on Long Island, NY drew on the experience of the firm's real estate, government relations, commercial litigation, and environmental attorneys.